

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0617
SALES TAX
For Years 1996, 1997, and 1998**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax—Assessment of Use Tax on Lump-sum contracts

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-4; IC 6-8.1-5-1(a).

Taxpayer protests the 75% proportioning of sales to Indiana sources.

STATEMENT OF FACTS

Taxpayer does landscape architecture, then installs the plant and construction materials. Taxpayer provided no sales invoices or journals to the Department. Until April 1999, Taxpayer was not registered to collect Indiana sales tax. Since Taxpayer is a landscaper/contractor who failed to provide documentation, the auditor for the Department took the position that Taxpayer billed on a lump-sum basis. Billing on a lump sum basis would not have required Taxpayer to collect sales tax from the customer.

Accepting this required that use tax be determined and assessed on the materials provided to the customer. No purchase invoices were available, so the Department conducted a corporate income tax audit and determined Indiana gross receipts to be 75% of Taxpayer's revenues. Thus, 75% of the cost of goods sold were portioned to Indiana as taxable purchases. The cost of goods calculation did not include labor.

Taxpayer protested the assessment proportioning and filed a protest. The Department attempted to contact Taxpayer by mail for over one year to resolve the file, but all mail sent to Taxpayer was returned as undeliverable. Two separate addresses were used in an attempt to correspond with Taxpayer. The Department undertook a simple query of telephone listings of Taxpayer's name in an attempt to find a current address, but Taxpayer's name was not listed. This Letter of Finding was written based on the information available in the file.

I. Sales and Use Tax—Assessment of Use Tax on Lump-sum contracts

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-8.1-5-4 affirmatively requires a taxpayer to keep books and records so that the Department can review the documents to determine the amount of a taxpayer's liability for applicable taxes. The records required to be maintained include invoices, register tapes, receipts, and canceled checks. *Id.* Documentation was not made available to the Department. If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, IC 6-8.1-5-1(a) mandates the Department to make a proposed assessment of the amount of unpaid tax on the basis of the best information available to the Department.

Because of the nature of Taxpayer's business, the Department determined that the lump-sum contract method best represents the information needed to determine Taxpayer's tax liabilities. As well, the Department proportioned the Indiana contracts based on Taxpayer's corporate income tax return. Taxpayer did not present any documentation to rebut the Department's assessment; therefore, the assessment stands as determined.

FINDING

Taxpayer's protest is denied .

AAG/JMM/TMR—051702